



DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA-2016-0037]

Notice of Proposed Buy America Waiver for Ultrastraight Rail

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of proposed Buy America waiver and request for comment.

SUMMARY: The Federal Transit Administration (FTA) received a request from the Central Puget Sound Transit Authority (Sound Transit) for a Buy America non-availability waiver for the procurement of ultrastraight rail. Sound Transit seeks to procure ultrastraight rail for a portion of its Northgate Link light rail extension to avoid exceedance of contractually-mandated vibration thresholds. Sound Transit seeks a waiver because there is no domestic manufacturer available to produce rail that has passed the applicable vibration testing standards. In accordance with 49 U.S.C. 5323(j)(3)(A), FTA is providing notice of the waiver request and seeks public comment before deciding whether to grant the request. If granted, the waiver would apply to a one-time FTA-funded procurement by Sound Transit.

DATES: Comments must be received by [INSERT DATE, 7 DAYS AFTER PUBLICATION].

Late-filed comments will be considered to the extent practicable.

ADDRESSES: Please submit your comments by one of the following means, identifying your submissions by docket number FTA-2016-0037.

1. Web site: <http://www.regulations.gov>. Follow the instructions for submitting comments on the U.S. Government electronic docket site.

2. Fax: (202) 493-2251.

3. Mail: U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Docket Operations, M-30, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

4. Hand Delivery: U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Docket Operations, M-30, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must make reference to the “Federal Transit Administration” and include docket number FTA-2016-0037. Due to the security procedures in effect since October 2011, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to <http://www.regulations.gov>. For more information, you may review DOT’s complete Privacy Act Statement in the Federal Register published April 11, 2000 (65 FR 19477), or you may visit <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Cecelia Comito, Assistant Chief Counsel, at (202) 366-2217 or cecelia.comito@dot.gov.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to provide notice and seek comment on whether the FTA should grant a non-availability waiver for Sound Transit’s purchase of approximately 15,100 feet of ultrastraight rail. On February 23, 2016, Sound Transit requested a Buy America waiver for the ultrastraight rail because the as-installed condition of ultrastraight rail, procured from a domestic manufacturer, failed to meet applicable vibration threshold requirements. Sound Transit estimates that the ultrastraight rail will cost approximately \$300,000.

Sound Transit's Northgate Link extension is a \$1.9 billion rail project that consists of 4.3 miles and 3 new stations, and runs through residential and employment areas, including the University of Washington. Approximately 15,100 feet of that extension will run under the University of Washington's Health Sciences and Physics-Astronomy buildings, which house precision-measurement laboratories and experiments conducted by Nobel Prize winning faculty. The project's potential impact on the University's buildings was considered as part of the environmental review process required by the National Environmental Policy Act (NEPA). In 2006, FTA issued a final Record of Decision (ROD) for the project, and required implementation of mitigation measures, including a measure that would minimize vibration under the University buildings. Sound Transit then executed a 2007 agreement with the University of Washington in which Sound Transit agreed to not exceed specified vibration thresholds, which could be met through use of ultrastraight rail, with parameters for that rail based on American Railway Engineers Maintenance-of-Way Association ("AREMA") standards.

Sound Transit contacted domestic rail manufacturers regarding their ability to produce ultrastraight rail within the agreed upon AREMA specifications for the rail. Two leading manufacturers, Steel Dynamics, Inc. (SDI) and EVRAZ North America (EVRAZ), stated unequivocally that they are unable to fabricate rail that meets the specification. Sound Transit subsequently explored using domestically-sourced, milled rail. However, testing of the as-installed milled rail found that the rail failed to meet the applicable vibration thresholds. Due to its unsuccessful efforts to procure domestically-sourced ultrastraight rail within the vibration thresholds, Sound Transit seeks a non-availability waiver of the Buy America requirements for domestically-sourced steel.

With certain exceptions, FTA's Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless "the steel, iron, and manufactured goods used in the project are produced in the United States." 49 U.S.C. 5323(j)(1). The steel and iron requirements apply to all construction materials made primarily of steel or iron and used in infrastructure projects such as transit or maintenance facilities, rail lines, and bridges. These items include, but are not limited to, structural steel or iron, steel or iron beams and columns, running rail and contact rail. For steel or iron to be considered produced in the United States, all steel and iron manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives. 49 CFR 661.5.

If, however, FTA determines that "the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality," then FTA may issue a waiver (non-availability waiver). 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c). Any non-availability waiver granted would be effective for a one-time procurement of the rail and would expire upon completion of that procurement.

Finally, under 49 U.S.C. 5323(j)(6), FTA cannot deny an application for a waiver based on non-availability unless FTA can certify that (i) the steel, iron, or manufactured good (the "item") is produced in the United States in a sufficient and reasonably available amount; and (ii) the item produced in the United States is of a satisfactory quality. Additionally, FTA must provide a list of known manufacturers in the United States from which the item can be obtained. FTA is not aware of any manufacturers who produce ultrastraight rail that would meet the required parameters in the United States.

Sound Transit conducted an extensive search for a domestic manufacturer of ultrastraight rail, including testing domestically-sourced, milled rail. Unfortunately, testing of the as-installed milled rail found that the rail failed to meet the applicable vibration thresholds. Due to its unsuccessful efforts to procure domestically-sourced ultrastraight rail within the vibration thresholds, FTA proposes to grant Sound Transit a non-availability waiver of the Buy America requirements for 15,100 feet of ultrastraight rail, as required in the 2007 agreement between Sound Transit and the University. This non-availability waiver would be effective for a one-time procurement of the rail and would expire upon completion of that procurement.

The purpose of this notice is to publish Sound Transit's request and seek public comment from all interested parties in accordance with 49 U.S.C. 5323(j)(3)(A). Comments will help FTA understand completely the facts surrounding the request, including the effects of a potential waiver and the merits of the request. After consideration of the comments, FTA will publish a second notice in the Federal Register with a response to comments and noting any changes made to the proposed waiver as a result of the comments received.

Ellen Partridge
Chief Counsel

[FR Doc. 2016-26316 Filed: 10/31/2016 8:45 am; Publication Date: 11/1/2016]